

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Cr. No. 20-01370-KWR
	)	
<b>JULIAN GARCIA III,</b>	)	
	)	
Defendant.	)	

**UNITED STATES' RESPONSE TO THE FIRST COURT PROPOSED  
JURY INSTRUCTIONS**

The United States hereby responds to the First Court Proposed Jury Instructions, Doc. 122, as directed.

1. **Directed Questions 1 and 2: Whether references to Count 3 should be removed from these instructions; Whether a limiting instruction is needed as to Defendant's plea of guilty as to Count 3, and, if so, the proposed language.**

Defendant did not plead guilty to Count 3 of the second superseding indictment. Docs. 116 and 123. Therefore, references should not be removed from the instructions and no limiting instruction is necessary.

2. **Modification to Proposed Instruction at Page 2**

Reference to Count 3 should remain included because Defendant did not plead guilty.

3. **Modification to Proposed Instruction at Page 3**

Reference to Count 3 should remain included because Defendant did not plead guilty.

4. **Modification to Proposed Instruction at Page 9**

Reference to Count 3 should remain included because Defendant did not plead guilty.

**5. Response to Proposed Instruction at Page 13**

The United States acknowledges the note to counsel and will provide input as required.

**6. Response to Proposed Instruction at Pages 15-16**

The United States acknowledges the note to counsel and will alert the Court as required.

**7. Response to Proposed Instruction at Page 17**

The United States acknowledges the note to counsel and will alert the Court as required.

**8. Response to Proposed Instruction at Page 18**

The United States acknowledges the Court's modification and the note to counsel and will alert the Court as required.

**9. Response to Proposed Instruction at Pages 20-21**

The United States acknowledges the Court's modification and the note to counsel.

**10. Response to Proposed Instruction at Page 22**

The United States acknowledges the Court's modification and agrees that the causation standard utilized by the Court below the Government's Proposed Instruction 16 suffices.

**11. Modification to Proposed Instruction at Page 24**

The Instruction relating to Count 3 should remain included because the Defendant did not plead guilty.

**12. Objection and Proposed Modification to Proposed Instruction at Pages 26-28**

The United States acknowledges the note to counsel and the Court's preference to utilize a pattern instruction. The United States agrees that an instruction on causation is required in this case.

The United States respectfully objects to certain language in this proposed instruction and requests that whatever language remains after resolution of the objections be incorporated into

the Court's proposed instruction covering Count 2. If it remains a separate instruction, there is some danger that jurors will confuse the instruction to apply to other counts in addition to Count 2. The government understands that NMRA UJI 14-134 is typically provided as a separate and independent instruction. However, because there are other counts that do not require direct proof of defendant's intoxication in the present Indictment, merger of language from Count 2 and this proposal is warranted to ease the jury's understanding and use of the instructions.

The United States objects to language in this proposal as follows:

- "In addition to the other elements set forth in Count II, the Government must also prove to your satisfaction beyond a reasonable doubt that..." This language will be surplusage if the remaining portions of the instruction are incorporated into the exiting proposed instruction for Count 2.
- "1. Jane Doe suffered bodily injury;" The Court's modification to the proposed instruction for Count 2 already includes this element as follows: "Second: As a result of this unlawful act, the defendant caused bodily injury to Jane Doe." Including similar language twice is duplicative and may confuse the jury.
- "The bodily injury was the foreseeable result of the defendant's act of operating an off-highway motor vehicle while under the influence of intoxicating liquor or drugs; and..." The court's modification expands on the UJI. The United States respectfully requests that this language be shortened to the language provided in the pattern instruction: "The injury or harm was the foreseeable result of the defendant's act; and..." If modified and incorporated, this should be included in the Count 2 instruction as the new Third element, moving the Fourth and Fifth elements to become Fifth and Sixth elements.

**13. Response to Proposed Instruction at Page 29**

The United States acknowledges the Court's modification and the note to counsel.

**14. Response to Proposed Instruction at Page 32**

The United States acknowledges the Court's note to counsel and will alert the Court as required.

**15. Response to Proposed Instruction at Page 35**

The United States acknowledges the Court's note to counsel and will alert the Court as required.

**16. Response to Proposed Instruction at Page 37**

The United States acknowledges the Court's note to counsel and will alert the Court as required.

**17. Response to Proposed Instruction at Page 38**

The United States acknowledges the Court's note to counsel and will alert the Court as required.

**18. Modification to Proposed Instruction at Page 39**

The United States respectfully requests that the instruction remain as proposed or modified to reflect the following. The United States intends to admit exhibits 6-8 and will utilize paper copy transcripts as demonstrative aids while the recordings are being played. In its Second Amended Exhibit List, Doc. 117, the United States included the following footnote: "In trial binders prepared for the Court and Counsel, Exhibits 6-8 include Exhibits 6A-8A, which are transcripts of the recordings. These transcripts are not included in the United States' JERS submission and paper copies will be utilized as demonstrative aids for Jurors during trial."

**19. Response to Proposed Instruction at Page 41**

The United States acknowledges and appreciates the Court's correction of this typo.

**20. Response to Proposed Instruction at Pages 45-47**

The United States acknowledges and appreciates the Court's consolidation and modifications.

Respectfully submitted,

FRED J. FEDERICI  
Acting United States Attorney

*Electronically filed on September 10, 2021*

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I HEREBY CERTIFY that on September 10, 2021,  
I filed the foregoing electronically through the  
CM/ECF System, which caused counsel for the  
defendant to be served by electronic means, as more  
fully reflected on the Notice of Electronic Filing.

/s/  
ALEXANDER F. FLORES  
Assistant United States Attorney